

offender status was based in part on an unreasonable prior state sentence,² and that defense counsel “overlooked this miscalculation” and provided ineffective assistance. Paper No. 23, p. 2.

To the extent Jackson seeks direct review of his sentence, 18 U.S.C. §3582(c)(2) precludes modification unless certain statutorily prescribed exceptions apply. *See* 18 U.S.C. §3582(c). A court may modify a sentence only: 1) upon motion of the Director of the Bureau of Prisons if “extraordinary and compelling reasons” exist; 2) if otherwise expressly permitted by statute or Federal Rule of Criminal Procedure 35; or 3) if the sentencing range is subsequently lowered by the Sentencing Commission. *See* 18 U.S.C. §3582(c)(2). Jackson neither demonstrates compelling nor extraordinary reasons to warrant modification of sentence, and the remaining statutory exceptions are inapplicable. For these reasons, the pleading, construed pursuant to 28 U.S.C. § 2255, will be dismissed by separate Order.

December 18, 2008

Date

_____/s/_____
William D. Quarles, Jr.
United States District Judge

² In the event a petitioner is successful in vacating a predicate state conviction, thereby lowering his criminal history, post-conviction relief may be available within one year of vacatur upon demonstration of due diligence. *See Johnson v. United States*, 544 U.S. 295, 298 (2005) (applying 28 U.S.C. § 2255 (f)(4)).